

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

X

S [REDACTED] A [REDACTED] (an infant), by his mother &
natural guardian, KEISHA ANDREWS, and
R [REDACTED] C [REDACTED] (an infant), by his mother
and natural guardian, DIANE MATHISON,

Index No:
Date Filed:

Plaintiffs,

Plaintiff designates
KINGS COUNTY
as the place of trial

-against-

The basis of the venue is:
Place where cause of action
arose

THE CITY OF NEW YORK, POLICE OFFICER
NICHOLAS MARTUCCI (Tax # 950838) and
POLICE OFFICERS JOHN DOE 1-10¹,

SUMMONS

Defendants.

The plaintiff's reside at:
Kings County, New York

To the above named defendant(s): X

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear, judgment will be taken against you by default for the relief demanded in the complaint set forth below.

Dated: Brooklyn, New York
February 14, 2017

Yours, etc.

LAW OFFICES OF WALE MOSAKU, P.C.

BY: WALE MOSAKU
Attorney for Plaintiff(s)
25 Bond Street, 3rd Floor
Brooklyn, New York 11201
(718) 243-0994

THE CITY OF NEW YORK
C/O New York City Law Department
100 Church Street
New York, N.Y. 10007

¹ The specific names, tax/shield numbers and address for service of process of these officers are presently unknown to the claimants.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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S [REDACTED] A [REDACTED] (an infant), by his mother &
natural guardian, KEISHA ANDREWS, and
R [REDACTED] C [REDACTED] (an infant), by his mother
and natural guardian, DIANE MATHISON,
Plaintiffs,

-against-

COMPLAINT

THE CITY OF NEW YORK, POLICE OFFICER
NICHOLAS MARTUCCI (Tax # 950838) and
POLICE OFFICERS JOHN DOE 1-10,

Defendants.

-----X

S [REDACTED] A [REDACTED] (an infant), by his mother & natural guardian, KEISHA
ANDREWS, and R [REDACTED] C [REDACTED] (an infant), by his mother and natural
guardian, DIANE MATHISON (hereinafter "plaintiffs"), by their attorney(s), THE LAW
OFFICES OF WALE MOSAKU, P.C., complaining of the defendants THE CITY OF
NEW YORK, POLICE OFFICER NICHOLAS MARTUCCI (Tax # 950838) and
POLICE OFFICERS JOHN DOE 1-10 (collectively referred to as "the defendants"),
upon information and belief, allege as follows:

NATURE OF THE ACTION

1. This is an action at law to redress the deprivation of rights secured to the plaintiffs under color of statute, ordinance, regulation, custom: and/or to redress the deprivation of rights, privileges, and immunities secured to the plaintiffs by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States, and by Title 42 U.S.C. §§ 1982, 1983 and 1985; and arising under the law and statutes of the City and/or State of New York.

THE PARTIES

2. At all times material to this complaint, plaintiffs were, and they still are, residents of the City of New York, who at all times material and

RECEIVED NYSCEF: 02/14/2017

relevant to this complaint resided, and still reside, in Kings County, City and State of New York.

3. At all relevant times, defendants POLICE OFFICER NICHOLAS MARTUCCI (Tax # 950838)and POLICE OFFICERS JOHN DOE 1-10 (collectively referred to as "defendant officers"), of the New York City Police Department (hereinafter "NYPD"), upon information and belief, were, and still are, law enforcement officers in the employ of the NYPD.
4. At all times herein, the defendant officers were employed as law enforcement officers of the NYPD, and were acting under the color of their official capacity, and their acts were performed under color of the statutes and ordinances of the City of New York and/or the State of New York. The defendant officers were the servants, agents, and employees of their co-defendant, the City of New York, so that their acts are imputed to the City of New York and the NYPD.
5. At all relevant times, the defendant City of New York was/is a municipal corporation of the State of New York, and was/is the employer of the defendant officers, through its Police Department, namely the NYPD, and the actions of the defendant officers complained of herein were done as part of the custom, practice, usage, regulation and/or direction of the City of New York.
6. The plaintiffs sue all defendants in their individual and official capacities.

SATISFACTION OF THE PROCEDURAL PREREQUISITES FOR SUIT

7. All conditions precedent to filing of this action have been complied with; on March 24, 2016, within ninety days after the claims alleged in this complaint arose, a written notice of claim, sworn to by each plaintiff and/or his representative, was served upon the defendant City of New York by personal delivery of the notice in duplicate, to the person designated by law as one to whom a summons issued against such party may be delivered in an action in the applicable

Courts. Plaintiff S [REDACTED] A [REDACTED]'s claim was assigned Claim No.

2016PI011319. Plaintiff R [REDACTED] C [REDACTED]'s' claim was assigned
Claim No. 2016PI011320.

8. At least thirty days have elapsed since the service of the above-mentioned notices of claim, and adjustment or payment of the claims have been neglected or refused.
9. This action, pursuant to New York State and City Law, has been commenced within one year and ninety days after the happening of the event upon which the claims are based.

FACTUAL ALLEGATIONS

10. On or about February 18, 2016, at approximately 07:30 p.m., the infant plaintiffs were unlawfully arrested by the defendant officers within the Park/Playground located on Blake Avenue between Georgia Avenue and Williams Avenue within the New York City Housing Authority development known and "Unity Plaza" ("subject location").
11. At the time they were arrested, the infant plaintiffs had not committed any crime or offense.
12. Nevertheless, the infant plaintiffs were transported to the 75th precinct, where they were photographed and fingerprinted. The infant plaintiff's remained handcuffed within the 75th precinct until approximately 03:00 a.m. on February 19, 2016, at which time they were released.
13. At the time the infant plaintiffs were arrested, the defendant officers assaulted and battered the infant plaintiffs by forcefully handcuffing said plaintiffs against their will and without their consent, causing said plaintiffs to suffer bruising, lacerations, pain and discomfort.
14. Upon their release, the infant plaintiffs were compelled to report to the Kings County Courthouse located at 320 Jay Street, Brooklyn, New York 11201, on February 22, 2016.

15. Upon reporting to the Kings County Courthouse on February 22, 2016, the infant plaintiffs were directed to report to the Brooklyn Family Court located at 330 Jay Street, Brooklyn, New York 11201, on March 14, 2016, in order to find out whether a case was going to be filed against them.
16. On or about March 14, 2016 (R [REDACTED] C [REDACTED]) and March 16, 2016 (S [REDACTED] A [REDACTED]), the infant plaintiffs' respective mothers each received a "Notice of Declination" wherein the infant plaintiffs were informed that the "Office of the Corporation Counsel (prosecutor) has determined that a petition will not be filed against the above-named juvenile (the claimant) in connection with the above-referenced matter", and that "[t]his matter will be closed and sealed pursuant to Family Court Act §375.1(4) within thirty (30) days".

CAUSE OF ACTION ON BEHALF OF THE PLAINTIFFS: UNLAWFUL SEARCH UNDER 42 U.S.C. § 1983

17. By this reference, each plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 16 of this complaint as though fully set forth herein.
18. Prior to and following the plaintiffs arrests, the defendants searched and/or caused the plaintiffs and/or his/their property to be searched, without any individualized reasonable suspicion that the plaintiffs were concealing weapons or contraband.
19. As a result of the foregoing, the plaintiff was/were subjected to illegal and improper searches.
20. The foregoing unlawful search violated each plaintiff's constitutional right to privacy, as guaranteed by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

CAUSE(S) OF ACTION ON BEHALF OF THE PLAINTIFFS: FALSE ARREST AND
FALSE IMPRISONMENT UNDER 42 U.S.C § 1983/NEW YORK STATE LAW

21. By this reference, the plaintiffs incorporate each and every allegation and averment set forth in paragraphs 1 through 20 of this complaint as though fully set forth herein.
22. The above-described respective arrest, detention and imprisonment of the plaintiffs by the defendant officers was/were without just or probable cause and without any warrant or legal process directing or authorizing the plaintiffs arrest(s) or subsequent detention(s).
23. As a result of the plaintiffs above-described false arrest(s) and detention(s) by the defendant officers, the plaintiffs have been caused to suffer humiliation, great mental and physical anguish, embarrassment and scorn among those who know them, were prevented from attending to their necessary affairs, and have been caused to incur legal expenses, and have been otherwise damaged in their character and reputation.
24. Consequently, the plaintiffs have been damaged and hereby demand compensatory and punitive damages in an amount to be proven at trial against each of the defendants, individually and severally.
25. The defendant officers were at all material times acting within the scope of their employment, and as such, the defendant City is vicariously liable for the defendant officers acts as described above.
26. This action falls within one or more of the exceptions of the New York State Civil Practice Law and Rules §1602.

CAUSE OF ACTION ON BEHALF OF ALL PLAINTIFFS: FAILURE TO
INTERVENE UNDER 42 U.S.C § 1983

27. By this reference, each plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 26 of this complaint as though fully set forth herein.

28. Each and every individual defendant had an affirmative duty to intervene on each plaintiff's behalf to prevent the violation to his constitutional rights, as more fully set forth above.
29. The individual defendants failed to intervene on each plaintiff's behalf to prevent the violation of his constitutional rights, despite having had a realistic and reasonable opportunity to do so.
30. As a consequence of said defendants' actions, each plaintiff suffered loss of liberty, humiliation, mental anguish, depression, loss of wages from work, and his/her constitutional rights were violated. Each plaintiff hereby demands compensatory damages and punitive damages, in the amount of to be determined at trial, against each of the defendants, individually and severally.

CAUSE OF ACTION ON BEHALF OF EACH PLAINTIFF: ASSAULT AND BATTERY

31. Each plaintiff repeats and realleges paragraphs 1 through 30 as if each paragraph is repeated verbatim herein.
32. As set forth above, the defendants assaulted each plaintiff, battered each plaintiff, and subjected each plaintiff to excessive force and summary punishment.
33. The defendants were at all material times acting within the scope of their employment.
34. Consequently, each plaintiff has been damaged and hereby demands compensatory and punitive damages in an amount to be proven at trial against the defendants, individually and severally.
35. The defendants were at all material times acting within the scope of their employment, and as such, the defendant City is vicariously liable for the defendants acts as described above.
This action, upon information and belief, falls within one or more of the exceptions of CPLR 1602.

WHEREFORE, each plaintiff prays for judgment against the defendants, individually and severally, as follows: for compensatory damages against each defendant in an amount to

be proven at trial; for exemplary and punitive damages against each defendant in an amount to be proven at trial; for costs and expenses of suit herein, including each plaintiff's reasonable attorney's fees; for pre-judgment and post-judgment interest; all in a sum of money that exceeds the jurisdiction of all lower Courts, and for such other and further relief as this court deems just and appropriate.

Dated: Brooklyn, New York
February 14, 2017

LAW OFFICES OF WALE MOSAKU, P.C.

By:

Wale Mosaku
Attorney for the Plaintiffs
25 Bond Street, 3rd Floor
Brooklyn, N.Y. 11201
(718) 243-0994

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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S [REDACTED] A [REDACTED] (an infant), by his mother &
natural guardian, KEISHA ANDREWS, and
R [REDACTED] C [REDACTED] (an infant), by his mother
and natural guardian, DIANE MATHISON,

Plaintiff,

-against-

ATTORNEY
CERTIFICATION
PURSUANT TO 22 NYCRR
Part 130-1.1(c)

THE CITY OF NEW YORK, POLICE OFFICER
NICHOLAS MARTUCCI (Tax # 950838) and
POLICE OFFICERS JOHN DOE 1-10,

Defendants.

-----X-----

The undersigned attorney does hereby certify:

That I am the attorney for the plaintiff and duly admitted to practice law before the Courts of the State of New York. I do hereby provide this signed certification pursuant to 22 NYCRR Part 130-1.1 (c), that the papers that I have served, filed or submitted to the Court in this action are not frivolous.

Dated: Brooklyn, New York
February 14, 2017

LAW OFFICES OF WALE MOSAKU, P.C.

BY: Wale Mosaku, Esq.
Attorney(s) for Plaintiffs
25 Bond Street, 3rd Floor
Brooklyn, New York 11201
(718) 243-0994

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THE CITY OF NEW YORK, POLICE OFFICER
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Defendant(s).

SUMMONS AND COMPLAINT

LAW OFFICES OF WALE MOSAKU, P.C.

Attorney(s) for Plaintiff(s)
25 Bond Street, 3rd Floor
Brooklyn, New York 11201
(718) 243-0994

To: Service of a copy of the within
is hereby admitted.

Dated: 200 .

Attorneys for Defendant(s)
